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December 19, 1997

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DEC 19 1997

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Implementation of Section 402(b)(2)(A) of the
Telecommunications Act of 1996, CC Docket No. 97-11
Written Ex Parte Filing

Dear Ms. Salas:

Enclosed please find a paper prepared by BellSouth Corporation outlining its additional concerns about issues raised in the above referenced proceeding. This paper supplements BellSouth's earlier filed comments in this proceeding. Please associate this letter and the accompanying paper with the docket proceeding.

If you have any questions regarding this filing, please contact the undersigned.

Sincerely,



Ben G. Almond
Executive Director- Federal Regulatory

Attachment

cc: Kent Nilsson
Bill Howden
Marty Schwimmer

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BellSouth Corporation
CC Docket No. 97-11
Implementation of Section 402(b)(2)(A) - Section 214 Requirements

On February 24, 1997, BellSouth filed comments in the above proceeding recommending that the Commission treat any augmentation of lines in a carrier's domestic network as an "extension of any line" and therefore exempt from Section 214 authorizations. BellSouth also supported the Commission's tentative conclusion that it should eliminate the annual continuing authority report and the semi-annual temporary/emergency service report, and supported the Commission's proposal to streamline the filings required to discontinue service.

BellSouth expressed particular concern about the Commission's proposal to distinguish between "new lines" and the "extension of any line" in implementing Section 402(b)(2)(A) of the Telecommunications Act of 1996. Despite the fact that historically there has been no distinction between "new" lines and "extensions" of lines, the NPRM infers that Congress intended to create such a distinction now, and to limit the regulatory relief to be provided to carriers from Section 214 requirements. (Even the NPRM concedes that its proposed definitions would result in the Commission retaining jurisdiction over the construction of most in-region facilities.) BellSouth noted that it is just as logical to assume that Congress was aware that the Commission and the Courts treated "new" lines and "extensions" of lines indistinguishably, and intended that the Commission continue to do so. It also seems likely that if Congress intended to create only a very narrow window of regulatory relief from Section 214 requirements such an intent would be more apparent.

However, the concern even more troublesome than this difference of viewpoint is the very real possibility that, in the Commission's efforts to create a distinction between "new" lines and "extensions" lines", it will create confusion and more Section 214 authorization requirements than currently exist. Clearly, this outcome would be contrary to the intent of Congress.

For example, the proposed definition of an "extension of a line" is a line that allows a carrier to expand into new geographic territory. This means that a new wireline facility built into a new area would not result in new lines, but

in extended lines. Conversely, “new” lines would appear to include projects that expand the capacity of existing lines or introduce new capabilities. Such an interpretation could significantly increase the number of Section 214 authorization requests because carriers routinely expand their fiber capabilities through technological upgrades, but do not presently file Section 214 authorizations for such “projects”. (BellSouth also noted in its comments that such an interpretation would not square with the Court’s determination in Execunet I that once lines are authorized and constructed, the Commission cannot restrict the offering of additional services or capabilities over such lines.) In addition to the work effort additional Section 214 authorizations would impose on carriers and on the Commission, the Commission must recognize that the greater the number of pending authorizations the greater the risk of service delays attributable to the Section 214 authorization process.

BellSouth believes that the language of Section 402(b)(2)(A) should be read literally. When Congress authorized the Commission to permit any common carrier to be exempt from the requirements of Section 214 “for the extension of any line”, BellSouth views any line to mean: an initial line, a subsequent line, a line that taps off of an existing line, a line that begins at a central office, a copper-pair line, a derived channel line, fiber-based line, etc. BellSouth reiterates its support for definition (ii) from paragraph 35 of the NRPM wherein any augmentation of lines in a carrier’s network would be exempt from Section 214 requirements, without regard for the geographic scope or technical capability of the carrier’s existing network.

From a competitive standpoint, Section 214 authorizations indicating an expansion of capacity or introduction of new capabilities to a given area would serve as a “red flag” to the carrier’s competitors that the area is experiencing high growth or other revenue potential. In many ways, a showing of growth in a new area is more competitively valuable than a showing of a carrier’s initial entry into an area.

Another aspect of the proposed definitions which the Commission should consider is the additional training and tracking requirements for the proposed distinctions between “new” lines and “extensions” of lines. Obviously, extensive training would be required to explain why the initial placement of new facilities in a new area does not create “new” lines, but that a seemingly routine subsequent placement of electronics along that same route would create “new” lines and a Section 214 authorization

requirement. (The Commission and other interested parties would face a similar task in adjusting to requirements in which the plain meaning of words does not apply.) Clearly, new tracking procedures would also be necessary so that carriers could make the required Section 214 filings and monitor the approval process.

The Commission must balance the confusion and extra work effort associated with the proposed distinction between “new” lines and “extensions” of lines with the benefit to be gained. BellSouth is at a loss to identify any such benefit to the public, competitors, or to the FCC. Indeed, the only party to support the Commission’s proposed distinctions between “new” lines and “extensions” of lines appears to be motivated by concerns about “strategic investments” which would not be addressed by the Section 214 process.

Instead, the Commission should adopt BellSouth’s proposed definition of “extensions of any line”. In this way the application of Section 402(b)(2)(A) can be expanded, the scope of the Commission’s forbearance under Section 401 of the 1996 Act can be narrowed, and the Commission will better implement the intent of Congress.